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STUDENT GOVERNANCE IN RESIDENCE HALLS.

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The role of students in residence hall governance should be that of total student control where student conduct is concerned, including legislating rules, apprehending violators, and adjudicating penalties. A framework of role definitions for trustees, faculty, students, and administrators was proposed. The general goals and present problems of dormitory governance and student conduct must consider the dormitory as an unrestricted place to live and learn, with student power over student conduct. Dormitory restrictions should be only those absolutely necessary for maintaining order. Power to enact rules should rest entirely with those who must live with them. Apprehending violators must be handled by students, removing and freeing counseling staff from disciplinary duties. Adjudication procedures must guarantee the civil rights of the offender, with the penalty system applied by elected student judicial bodies. Students should also have a major voice in setting other long-range dormitory policies unrelated to student conduct. Excerpts from the Supreme Court's May 15, 1967 decision guaranteeing adult rights to juvenile are included. (WR)

STUDENT GOVERNANCE IN RESIDENCE HALLS

BY

David Cahill

Indiana University
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I. INTRODUCTION

Before getting down to the topic at hand, the role of students in residence hall governance, I think I should quickly describe the various roles which I believe the various groups within the University should play in governance. The groups are four: the trustees, the faculty, the students, and the administrators.

The trustees have legal control over nearly everything within the University. They represent the interest of the people of the state-- in the case of public institutions--and, since the university is financed largely through taxes and is open to all qualified people, it is right that the trustees have control over the institution. However, it must be pointed that the control of trustees is only in name and not in fact. Because they are usually on campus only a day or two per month, and because they hold other full-time jobs, they are by and large under the control of other groups within the university, and generally approve what they are presented with, with little or no opposition. It is only when they are under political pressure from anti-intellectual groups in the state at large that they may occasionally overrule decisions of other university groups. The trustees, then, largely legitimize the decisions already made by these other groups.

The second major group in the university is the faculty. By tradition the faculty has control over two areas: academic affairs and student conduct. In fact, the judicial power over conduct is granted to the IU faculty by Indiana law. By far the major concern of the faculty, however, is academics. It is given free rein by the trustees in this area. The control over student conduct is almost never exercised, but is left to an administrative official, usually the Dean of Students. There are several reasons for this. First, the faculty has its hands full with academic matters. Second, the faculty may feel that student conduct is essentially beneath its dignity. In the recent controversies at Berkeley, for instance, it was only after extreme provocation and turmoil that the faculty was moved to exert its power in this area. And third, most faculty members are completely unaware of this institutional power of the faculty. They have no reason to become involved with student conduct, and other interests within the university are not about to make them aware of it.

The students are the third major group within the university. Their position vis-a-vis other groups is undergoing considerable change at present. It used to be that students were considered to be totally under the control of the institution, and had almost no say about the rules which governed them.

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But the current wave of activism is changing that. Students now recognize that they have a legitimate interest in how the university is run. This interest, in my point of view, stretches all the way from student conduct--in which area I believe students should have total control--to the allocation of funds for construction, research, and teaching, where I believe that students should share control with the faculty and the trustees, the other groups having concerns in these areas. And, although I doubt whether we will see this joint control over institutional matters come to pass in the near future, I think it is almost inevitable in the long run.

Now, where does this place the fourth group in the university--the administrators? In my view, the full-time employees of the university should play only an advisory role in policymaking, with the final control left to students and faculty. (I am assuming that the trustees will continue to approve whatever they are presented with.) This is because the faculty and the students are the groups for which the university exists. The non-academic employees perform the necessary jobs for the continued functioning of the university as a physical and social entity. I am not trying to belittle the importance of the administrator. It is obvious that he has much of the specialized knowledge without which the university could not function. But how that knowledge is used, and what the final policies are, should be decided by the groups which the administrators serve: the students and faculty.

Now the reason I am making so much of this point is that in the past policies have been enacted by administrators for purposes which in many cases were not in accord with student interests. Clearly, the fact alone that administrators have to satisfy--or more precisely think, they have to satisfy--parents and others outside the university would account for the making of policies without student representation and against the interests of the students.

II. DORMITORY GOVERNANCE: STUDENT CONDUCT

A. General goals and present problems

Now let us turn to the topic for discussion today--the dormitory and the student's role in helping govern it. Bearing in mind what I have just said, we have to first establish what the goals of the activities within a dormitory are. So, what is a dormitory?

First, and most important, a dormitory is a place to learn. This means, at minimum, that there must be a proper environment for study. It is clear that people cannot be forced to study. However, it is the responsibility of the governing authorities to make certain that those who wish to study may do so. This means above all a system of quiet hours. The furnishing of other facilities, such as libraries, is helpful but not necessary.

Second, a dormitory is a place to live. It is the only home which students have for nine months out of the year. Also, it is a large home, housing upwards of a thousand students on large campuses. The very fact that so many students are living so close together may mean--and I emphasize may--

that conduct has to be controlled to a greater extent than it would be if living quarters were more spread out.

Now we come to the real issues as students see them? Which restrictions should be made? And who should make them?

As to the first, my answer is that only those restrictions which are absolutely necessary for the maintenance of order should be imposed. Unfortunately, this is not the case at present, with several interesting results. First, students do not wish to live in dormitories. This is clearly evident here at IU, where the lowering of the age at which students may move out of dorms has meant a sizeable exodus of older students from them. Students would much rather live in apartments, where they are subject only to the controls of civil law, than live in dorms, where they feel that they are subjected to regulations made for improper purposes and which are unduly restrictive.

This is clearly not the place for a catalog of student grievances. However, the fact that students leave dormitories shows beyond a doubt that they are unhappy. Now, I hope that it is possible to create an environment in the dorms which students prefer to that available in apartments off campus. But I am afraid that this will only be possible if many restrictions are removed.

The second result of over-restriction is that students who are required to live in dormitories are not happy. The job of administrators should be to create a place to live where the students will enjoy living.

Now, is there an over-all point of view which can solve this problem? I believe there is, and it can be found by looking at the physical nature of a dormitory. It is a large apartment building. Period. Students rent space from the University. They should be given all the rights which tenants of non-university housing have. And restrictions should not be made simply because their absence might lead to disorder. Instead, only disorder itself should be prohibited. For example, it is common practice to forbid the use of alcoholic beverages by students who are of legal age, on the grounds that drunken parties would flourish, and that minors would be able to get liquor. Naturally students resent what they regard as an improper denial of rights. In my mind, the answer is not to prohibit use, but to prohibit disorderly gatherings, whether or not they involve alcohol. As to the second difficulty, it is not the University's responsibility to enforce the laws of the state. That is the job of civil authorities.

With all this as background, it is time to turn to discussion of the three traditional divisions of policy-making: legislation, apprehension, and adjudication.

B. Legislation

The making of rules for the violation of which students may be penalized must, I feel, rest entirely with the students concerned. It is true that in most schools a "student government" is in existence, and usually a branch of this functions for the governance of dorms. But this "government" is a

misnomer. Often it does not have control over conduct, but just over activities and programs. And when it does have control over conduct, its policies cannot conflict with those made by the University. So the real issues of concern to students--women's hours, drinking, and so on--cannot be solved by enactments of student governments in most cases. All they can do is to advise and to exert pressure.

But even in those areas in which it is free to legislate, there are still crippling disabilities. First, students are transients, while administrators are not. The fact that student government records are indifferently kept, if at all, adds to the difficulty caused by the fact that students are on campus only a short time. Now, it has been objected that the transient nature of students renders them less deserving, in theory, of the exercise of power in the university. But this clearly is false, for otherwise we should restrict or deny the franchise to older citizens because they have a shorter time left to spend in society. The relevant fact is that students must live under rules, and that therefore they must enact them themselves.

A second disability is lack of time. Students can afford little time for extra-curricular activities, including student government, since they are full-time students. In this respect they are similar to the faculty.

A third disability is lack of experience, and of specialized knowledge.

Another reason sometimes given as to why student control cannot work is that it would inevitable lead to constant agitation within the dorms, to the detriment of study. This argument has within it several assumptions which seem to lie at the heart of reasoning against student control.

First, it is assumed that real political activity, as opposed to the "let's pretend" political activity that now goes on, is itself bad. This assumption overlooks the fact that the dormitory is not only a living unit but a society, and a society which requires the exercise of power over others. This exercise of power--the essence of politics--will be exerted by someone, either the staff or the students. And if students are taught, either formally or informally, that political action is to be avoided, especially when it is directly relevant to their own lives, then they are being indoctrinated with an anti-democratic ideology. Students should learn that political activity is not necessarily a form of deviant behavior, but that it is often necessary for achieving a decent life, both within and outside of the university.

Second, it is assumed that political activity is detrimental to intellectual life. This is even more insidious, for many modern students do not want to be associated with something anti-intellectual. It may be true that activity in student government will cost a temporary lowering of the point average. But the life of the mind cannot in my opinion be easily separated from social action. The benefit of political activity to budding social scientists alone would seem to be very high.

But I do not feel that we have to worry about hyperactivity in the dorms. There is a low level of political awareness to begin with. It is

part of our culture. There is a low sense of political efficacy as well, partly due to the authoritarian nature of present-day high schools. Also, two additional factors are involved. One is that students are under a good deal of informal control by administrators. What authority a student government may possess may be denied in practice, or belittled as unworthy of concern. And if students do not have the legal or political resources to drive their points home, student governance will be ineffective. The other factor is that, in part because of student government's impotence, there is little interest in it. Because there is no power, there are few contests over it at the dorm level.

It will take a great deal of effort to overcome these obstacles to effective student control over dormitory life. But these barriers are not unconquerable. Here at IU, for example, there is increasing political awareness and activity in dormitories.

There is one final point about legislative authority which I should make. It is my belief that the power to enact rules must be formally lodged not in any governing body, but in the students themselves. That is, any council should only have the power to propose rules to the students. The students should then decide by a referendum whether or not to accept the proposal. I think this is necessary for several reasons. First, because of the low level of activity, students may be unaware of what is going on at the higher levels and may in effect be "sold out" by a few student leaders who are not acting in the interest of their constituents. Referenda help make up for the lack of interest groups in the dorms. Second, it is good training in citizenship for the students to actually exercise the final decision over rules which govern them. And third, the number of students in a dorm is small enough to make referenda feasible. Representative democracy is only necessary where there are mechanical difficulties in determining the will of the people; direct democracy should work on the college campus.

C. Apprehension

I want to discuss next the so called "executive" or "apprehension" function in dorms. And I am going to assume for the sake of discussion that the changes I hope for in the legislative function have not been made, for I think this is more useful for considering the present situation. So we have the case where students are living under regulations which in most cases they did not make and which by and large are quite unpopular. Who should apprehend alleged violators of rules?

At present there is a very serious problem in enforcement, because it is carried out by paid members of the counseling staff. These people perform a double function. They are not only academic and personal counselors, but they are enforcers. It is my belief that there is an irreconcilable conflict between the role of an advisor and that of a policeman. It is this conflict which in my mind is responsible for the ambivalence with which counselors are treated within dormitories, and for the high rate of staff turnover.

On the one hand, there is the legitimate interest of the University in seeing that its rules are obeyed. On the other, there is the legitimate interest of the students not to be subjected to over-supervision and prying into private lives. And make no mistake about this: students do not regard counselors as helpers and advisors when they are enforcing non-student made rules. There is a definite conflict here, fought out every day within the various residence halls.

From what I am told, this constant conflict over rules leads to such distrust of the counseling staff that it is rendered almost incapable of performing its academic and personal counseling functions. Quite simply, students will not trust someone with whom they come into conflict.

There is only one way out of this problem that I can see. This is to completely remove the counseling staff from the disciplinary area. Although this removal has obvious disadvantages, its benefits outweigh its drawbacks in my opinion. The major benefit is that the counseling staff will be able to do its real and fundamental job of advising students effectively. If staffers do not have to serve police functions, they can serve the counseling function.

Now, the question legitimately arises, what about discipline? Who will enforce the rules? I feel that the students must; or at minimum, that the student's should decide if they or the staff should enforce each rule. Any student should be able to enter a complaint before the appropriate judicial authority. Counselors should as well, but they should have no power to search and seize or to issue "warnings." They should be treated as just other students.

This policy will have obvious effects on discipline. Rules which serve social purposes, such as quiet hours, will be enforced almost as before. But rules which do not will be enforced less rigidly. Although some would call this a loss, I would call it a gain. A lack of enforcement of unpopular laws has long been a hallmark of a democratic society. If for public relations purposes unpopular regulations must remain, student enforcement--or non-enforcement--of them can ease the blow and make dorm life more agreeable to all.

D. Adjudication

Now I want to complete this discussion of student control over student conduct by turning to the third function of government: adjudication. There are two tasks which any judicial system must accomplish: determining whether the conduct in question is actually in violation of regulations, and imposition of penalties if it is. And whenever you have these tasks performed, you have a judicial system, in fact if not in law. It does not matter in the least where you find judicial activity: in grievance procedures in factories, in the courts of law, or in university disciplinary procedures. A formal system which hands out penalties for rule violations is judicial in nature.

At present, from what I know of the IU system and what I have read about others, university judicial systems are set up a good deal like juvenile courts. They have these features in common: any action taken against someone is deemed to be in that person's best interest or "for his own good"; regulations are not precise, and people can be penalized for vague crimes like "delinquency"; the proceedings are usually confidential, on the theory that the juvenile must have his transgression hidden from society because of the harm that publicity alone can do his future life; the offender is denied adult rights to confrontation of witnesses, the right to counsel, and in some cases even the presumption of innocence. He is denied these rights on the ground that the proceeding is not a trial, but a simple hearing, and that everyone is working to help rather than penalize him. Thus, there is no "adversary relationship" and no need for the child or student to defend himself.

Now, this is the theory. But it does not work in practice, at least within the university. What happens is that if a student runs afoul of a rule, he is confronted by a judicial board or a counselor who is much better versed in the knowledge of the rules than he is, and the student is denied the help of a more competent person to present his side or to make legal defenses (for example, that evidence was obtained in violation of University regulations). This, plus the fact that he is often denied the right to cross-examine witnesses, means that a fair hearing is nearly impossible. The denial of publicity or open hearings means that the campus community at large has no opportunity to observe how justice is done, be it well or badly. And thus, there is no opportunity to correct the wrongs which will enevitable develop in even the best judicial system.

Now just last month the US Supreme Court handed down a decision which is very informative in this area. This decision voided entirely the juvenile court system as it is now set up, and guaranteed to juveniles all the due-process rights now granted to adults. The Court found that a fair hearing was simply impossible without the right to cross-examine, the right to counsel, and so on.* Of course, this decision does not at present affect the legality of the university's judicial system, since the university in effect runs a private government. The only requirement which courts have imposed is that at the appellate stage--here at IU, before the Student Conduct Committee--the student must have the rights of cross-examination and so on. Cases reaching the courts only involve expulsion, which is not normally considered in most cases coming under dorm judicial control.

But I think it is clear that justice just cannot be done when it is crippled by restraints which, although set up to protect the student, act in the opposite manner. Students coming before dorm judicial systems must be guaranteed the rights of all citizens.

* Selections from the text of the Court's decision will be found at the end of this paper.

The next point under student conduct adjudication is the matter of penalties. From what I can gather, the common penalty is a type of "probation." This may or may not entail the loss of certain rights. For example, at IU, to qualify for unrestricted hours, a woman must not be on probation. Being on probation may also cause ineligibility for scholarships of various kinds, and for some student government positions, for you are not in "good standing" when you are on probation. The theory behind probation is that it is a warning that the student's actions have not been proper, and that it is an attempt to rehabilitate, not a punishment. I frankly believe that probation is only of limited value. As far as I can tell, no student worth her salt is going to be convinced by being placed on probation that, for example, illegally staying out overnight is wrong. You can't hope to convince women that the rule is proper, because they know that it is not, and that it serves no valid social purpose. You can not change people's minds about rules which they think are unjust simply by telling them "You are on probation."

Another problem with probation is that, although supposedly each offense is treated individually, a system of "standard penalties" is very rapidly built up. This seems to rob the probation system of whatever value it may have had.

I would propose a system of penalties with greater emphasis on fining. These penalties should be imposed by student authorities, and not university authorities, in all but the most extreme cases. This way, a student's record is kept clean, and he will not run the risk of being denied a job in later life because he was on probation for illegally drinking in his room. If University sanctions are called for to protect the other residents, University officials should be pledged to impose the penalty decided upon by student authorities, or a lesser one at their discretion. This would place the legal responsibility for such action on the shoulders of the full-time employees, where it must be if University action is taken against a student.

Also, while it is impossible and unwise to compile a catalog of rigid penalties for various offenses, it is possible and very important to compile a list of maximum penalties for types of offenses. These should be set by the student legislative bodies, and not left totally up to the discretion of the student judicial boards and the counseling staff. Then a student would know that he cannot be kicked out of school for spilling shoe polish on his floor. Instead, he would just be fined for the cost of repair, plus an extra sum if it was malicious. At present, any penalty at all may be imposed for the most minor offense. This limit on the present absolute power of the judicial system to set penalties would be in keeping with the practice of society at large, where a range of penalties is provided for each crime by the legislature.

Also, student judicial bodies should be elected, to insure popular control of the judiciary. The current practice of the new board's being appointed by the outgoing one, especially considering that the "advice" of the counseling staff usually prevails, effectively prevents any new views on student conduct from being represented on the various boards.

III. DORMITORY GOVERNANCE: OTHER POLICY AREAS

Although student conduct is my main concern in the field of student governance, I would also like to make some very brief remarks about the role of students in setting other residence halls policies. Since students have a major interest in the halls, it follows that they should have a major voice in setting long-range policies. I am not sure in my own mind if they should have the dominant voice. But whatever voice they do have must be in voting power, not just in power to advise.

It is true that students may lack the specialized business or financial knowledge necessary to make detailed policy, but they are certainly as competent as administrative personnel to judge such questions as, should we get rid of student counselors and replace them with psychiatrists? Should we do away with maid service or should we raise the rent to pay for increased salaries? Also, they should certainly have a voice in drawing up the housing contract. While Mr. King in his remarks has made an able case against the students' possessing specialized knowledge, I was very interested to see that he admitted management's ignorance of these fine points.

No students wish to actually build the buildings or sell the bonds. But students can certainly help decide whether to build the buildings or sell the bonds.

I am happy to say that very recently here at IU some advances have been made in this area. Most notable was the decision to seek student opinion on whether to cut dorm services or to raise rates. The almost unanimous student opinion, to cut services, was approved this weekend by the Trustees. Although this was only advisory power, there is no reason why students should not soon have voting power over many decisions taken in the residence halls. A substantial increase in student representation on the central governing committee would be one place to start.

So, to conclude, I feel that by increasing student power within the residence halls, the University has a great deal to gain and very little to lose. Functioning student democracy within the halls will certainly mean happier students. There may be temporary dislocations and perhaps trouble with public relations, but these are small prices to pay in my opinion for the very great gains to be achieved in this field.

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APPENDIX

(Relevant excerpts from the Supreme Court's May 15, 1967 decision guaranteeing adult rights to juveniles, In re Gault, 35 Law Week 4399. Footnotes are omitted.)

The early juvenile reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child--essentially good, as they saw it--was to be made "to feel that he is the object of [The State's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the State was proceeding as parens patriae. The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance....

The right of the State, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty but to custody." ...On this basis, proceedings involving juveniles were described as "civil" not "criminal" and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.

Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is-- to say the least--debatable. And in practice, ...the results have not been entirely satisfactory. Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts...." The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.

...Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise.

.....

Beyond this, it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior....This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers.

.....

Further, it is urged that the juvenile benefits from informal proceedings in the court. The early conception of the juvenile court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help "to save him from a downward career." Then, as now, goodwill and compassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness--in short, the essentials of due process may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. For example, in a recent study, the sociologists Wheeler and Cottrell observe that when the procedural laxness of the "parens patriae" attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed. They conclude as follows: "Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel." Of course, it is not suggested that juvenile court judges should fail appropriately to take account, in their demeanor and conduct, of the emotional and psychological attitude of the juveniles with whom they are confronted. While due process requirements will, in some instances, introduce a degree of order and regularity to juvenile court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite....

.....

...Under our Constitution, the condition of being a boy does not justify a kangaroo court.

.....

NOTICE OF CHARGES.

.....

...[We require] that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.

.....

RIGHT TO COUNSEL.

...The [lower] court argued that "The parent and the probation officer may be relied upon to protect the infant's interests." Accordingly it rejected the proposition that "due process requires that an infant have a right to counsel." ...We do not agree. Probation officers...are also arresting officers....The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and in fact, is as arresting officer and witness against the child. Nor can the judge represent the child. There is no material difference in this respect between adult and juvenile proceedings of the sort here involved....The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

.....

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

.....

A CONFRONTATION, SELF-INCRIMINATION, CROSS-EXAMINATION.

The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and--in a philosophical sense--insists upon the equality of the individual and the State....One of its purposes is to prevent the State, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the State in securing his conviction.

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.

It is also urged...that the juvenile and presumably his parents should not be advised of the juvenile's right to silence because confession is good for the child as the commencement of the assumed therapy of the juvenile court process, and he should be encouraged to assume an attitude of trust and confidence toward the officials of the juvenile process....

In fact, evidence is accumulating that confessions by juveniles do not aid in "individualized" treatment, as the court below put it, and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose. In light of the observations of Wheeler and Cottrell, and others, it seems probable that where children are induced to confess by "paternal" urgings on the part of officials and the confession is then followed by disciplinary action, the child's reaction is likely to be hostile and adverse--the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished.

.....

We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.

.....

...No reason is suggested or appears for a different rule in respect of sworn testimony in juvenile courts than in adult tribunals. [Without] a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of "delinquency."...

...We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.